IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2598 OF 2003

Ravindra Gopal Shinde ..Petitioner.
Vs.
National Textile Corporation
9South Maharashtra) Limited & Ors. ..Respondents.
...

Mr. P.M. Patel for the Petitioner.
Ms. Nandini Menon for Respondent Nos.2 and 3.
....
CORAM: DR. D.Y. CHANDRACHUD, J.

11th August, 2006.

ORAL ORDER:

1. This Petition is directed against an order passed by the Industrial Court on 27th March, 2003 by which a complaint of unfair labour practices instituted by the Petitioner under items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was dismissed.

2. The Petitioner was in the employment of Kohinoor Mills Company Limited as a helper. From 18th October, 1983 the management of the Cotton Textile Undertakings of the aforesaid company was vested in the First Respondent upon the enactment

of the Textile Undertakings (Taking Over of Management) Act, 1983. Subsequently on 27th June, 1995 the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated as a result of which all workmen who were in employment from 18th October, 1983 were to be continued in the service of the nationalized undertaking. The Ordinance was replaced by the Textile Undertakings (Nationalisation) Act, 1995.

3. The contention of the Petitioner was that as an employee of the Nationalized Undertaking his services were continued with the First Respondent and his services had not been terminated at any point of time either before or after the taking over. The textile strike took place on and from 18th January, 1982. The case of the Petitioner is that he had not participated in the strike and that when he offered himself for work he was not assigned any work nor was he paid any salary. In the complaint, the Petitioner set up the case that he had addressed a complaint to the First Respondent on 27th March, 1996 and that though he was ready and willing to offer himself for work from 1st January, 1996 work had not been provided to him. Though the operation of the mills partially commenced from 10th February, 1984, the Petitioner claimed that he had

neither been assigned any work nor was he paid any salary.

4. The defence of the First Respondent was that the services of all the employees who were engaged by the textile company stood terminated or in any event must be deemed to have been retrenched on the eve of the take over in view of Section 25 FF of the Industrial Disputes Act, 1947. Assuming that the Petitioner was refused work by the erstwhile company on 18th January, 1982, the First Respondent submitted that this brought about a termination of the services of the Petitioner and his remedy was against the erstwhile employer. Furthermore, it was contended that the employees of the textile undertaking resorted to a strike which was declared illegal by the Labour Court and the Petitioner did not resume duty together with other employees.

5. Evidence was adduced before the Industrial Court. By its order dated 27th March, 2003, the Industrial Court came to the conclusion that the complaint was liable to be dismissed on the ground that the Petitioner was only a badli workman who had joined on 1st October, 1976; that as a result he had no right of employment and that in any event a badli workman could get work only in place of a permanent workman who was unavailable. The

Court held that the Petitioner had not explained as to why he did not approach the Court until 27th March, 1996 and that in the circumstances, he was disentitled to relief.

6. On behalf of the Petitioner it has been submitted that the contention that he was a badli employee was not raised in the written statement. The Petitioner, it was submitted, had instituted a complaint on the basis that he was an employee of the erstwhile Kohinoor Mills and his services were continued with the First Respondent upon nationalization of the mill. The defence that the Petitioner was a badli workman was, it was urged, not set up in the written statement and it was urged that even during the course of the cross-examination the Petitioner was not examined in regard to this issue. It was only in the course of the evidence of the Spinning Master who deposed on behalf of the First Respondent that a case was sought to be made out for the first time without any pleadings in that behalf that the Petitioner was a badli workman. However, the attention of the Court was drawn to the fact that there was an admission that in 1978, the Petitioner had completed work for a period of 267 days.

7. A perusal of the complaint before the Industrial Court and the written statement filed by the employer would demonstrate that the case of the Petitioner was that he was in the employment of the erstwhile Kohinoor Mills Company as a helper. The First Respondent did not set up the defence that the Petitioner was engaged as a badli employee. The written statement was but a stereo typed version of a format in which a large number of written statements were filed. For instance one of the defences was that the Petitioner had instituted an application under Section 33C(2) of the Industrial Disputes Act, 1947; the application number itself is kept blank in the written statement. It is common ground between the learned counsel that in this case the Petitioner had not instituted any application under Section 33C(2). Most of the other defences that were raised have been specifically adjudicated upon and negatived by this Court in several judgments. But, what is important to note here is that the defence that the Petitioner was a badli workman was not raised by the First Respondent in the written statement. Ex facie, it would appear from the examination of the workman that his case that he had joined Kohinoor Mills on 1st September, 1976 as a packer in the Moulding department was not controverted. The entire line of cross-examination was

confined to the strike which took place in the textile industry. The Spinning Master who deposed on behalf of the First Respondent produced the service record of the Petitioner which is marked in evidence as Exh. C-14. The witness stated that the complainant was a badli worker and that as he had failed to report for work after the cut off date of 31st March, 1983, his services were automatically terminated. However, in the course of the cross examination, the witness admitted that no letter had been sent to the complainant informing him that he should join work. The witness also admitted that in 1978 the workman in question had worked for 267 days. In these circumstances, the contention of counsel appearing for the Petitioner that the Petitioner had ceased to be a badli workman, in any event on and from 1978, has not been controverted on behalf of the First Respondent. That apart, there is merit in the submission urged on behalf of the Petitioner that the defence that the Petitioner was not a regular workman was in fact not taken on behalf of the First Respondent in the written statement. In any event, it is now abundantly clear from the admission of the First Respondent's witness that the Petitioner had completed work for a period of 267 days and therefore in excess of 240 days in the year 1978 itself. Therefore the basis on which the Industrial Court

dismissed the complaint is patently flawed.

8. There was undoubtedly a delay on the part of the Petitioner in moving the Industrial Court. The complaint was instituted on 29th March, 1996, but that, in my view, is not a circumstance which would disentitle the workman to any relief whatsoever. Admittedly this is not a case where there was an actual termination of the services of the workman. The contract of employment was not terminated at any stage and thus continued to subsist at all material times. The contention of the First Respondent that there was a deemed termination on the take-over of the erstwhile Kohinoor Mills Company Ltd. cannot be accepted because, that is not the consequence that is envisaged by the Nationalisation Act. In fact, one of the objects of nationalization was to provide for security of tenure to the existing employees. The delay on the part of the workman in such a case would be a ground for moulding relief by depriving him of backwages prior to the institution of the complaint. Backwages should also be refused because as a matter of fact, in the present case, it is now undisputed that units 2 and 3 of Kohinoor Mills have since been closed.

9. Counsel appearing for the Petitioner has drawn the attention of the Court to the fact that the First Respondent had published a scheme for voluntary retirement on 23rd January, 2002. The scheme applied even to badli, substituted, temporary and casual workers. The existence of the scheme has not been disputed on the part of the First Respondent in the submissions of Counsel before the Court. Clause 1.3 of the scheme provides for the scope of the scheme in the following terms :

> "1.3 The scheme shall apply to all regular / permanent employees, badli/ substituted/ temporary/ casual workers (by whatever name called) who are within the sanctioned strength and whose name appear in the muster roll of 39 mills as per Annexure-II in the phase-I and 21 Mills as per Annexure-III in the phase-II. However, the scheme will be extended only in 20 mills as per Annexure-I immediately and the date of applicability to other mills will be notified in due course."

10. Units 2 and 3 of Kohinoor Mills are specifically mentioned in Annexure I of the scheme. Clause 3.1.7 provides that even in the case of badli workers compensation is to be provided under the scheme for voluntary retirement in the following terms :

"3.1.7 In the case of Badli workers compensation will be paid @ 35 days for every completed year and 25 days compensation for the remaining service irrespective of minimum requirement of 240 days services in a year (as in the case of permanent employees) once their names are borne on the muster roll of the mill."

11. There is merit in the submission which has been urged on behalf of the Petitioner that even if he were to be regarded as a badli employee, he would at the least be entitled to the benefit of the provisions which are made in the scheme for voluntary retirement. In my view, having regard to all the facts and circumstances, particularly, the present financial position of the First Respondent, it would not be in the interests of justice either to grant an order of reinstatement or of backwages. An order of backwages is not warranted particularly having regard to the delay that was occasioned on the part of the First Respondent in moving the Industrial Court. At the same time, the ends of justice would be served if a direction is given to the First Respondent to consider the case of the Petitioner in terms of the scheme for voluntary retirement dated 23rd January, 2002 and to allow to the Petitioner

such benefits as are available thereunder within a period of eight weeks. The Petitioner would be entitled to interest at the rate of 9% on the amount which is due and payable to him upon the expiry of eight weeks and in the event that there is any delay on the part of the Second and Third Respondents in disbursing the amount that is due and payable. The order of the Industrial Court dated 27th March, 2003 is quashed and set aside. The complaint instituted by the Petitioner shall stand disposed of in terms of the directions issued hereinabove. In the circumstances of the case, there shall be no order as to costs.